eDiscovery Tools for FOIA Processing: *EPA Experience*

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Background: *EPA*

- **Environmental Protection Agency**
  - **18,000 employees**
  - **10 Regions** (Boston, NYC, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, Seattle), **Headquarters** (Washington), and **laboratories** (e.g., Ann Arbor, Las Vegas)
  - **Mission**: Protect human health and the environment (e.g., air, water, land, waste, toxic chemicals / pesticides) through regulations, permitting, inspections, enforcement, monitoring, grants/loans, and research.
  - **Approach**: Direct oversight or delegated oversight via States and Tribes

# Background: *FOIA & eDiscovery*

- **FOIA at EPA**
  - **Scope**: Receive 11,000 FOIA requests annually through HQ & Regions
  - **Oversight**: National oversight and policy making
  - **Approach**: Distributed processing of FOIA requests (Regions/Programs)
  - **NEW**: Centralized FOIA system, FOIA Module, to receive/store/process
  - **NEW**: eDiscovery tools to support selected FOIA collection/processing
- **eDiscovery at EPA**
  - **Scope**: About 800 legal holds, distributed across Regions and HQ
  - **Oversight**: Standard policies, procedures, and tools.
  - **Approach**: Central hub providing tech advice, Regional use of tools
  - **NEW**: National eDiscovery service center, automated tools, new policies
  - **NEW**: Store and issue holds, assess size and type of files, collect files, de-duplicate files, review files, and produce files

eDiscovery Service Center:
Overview of Operations
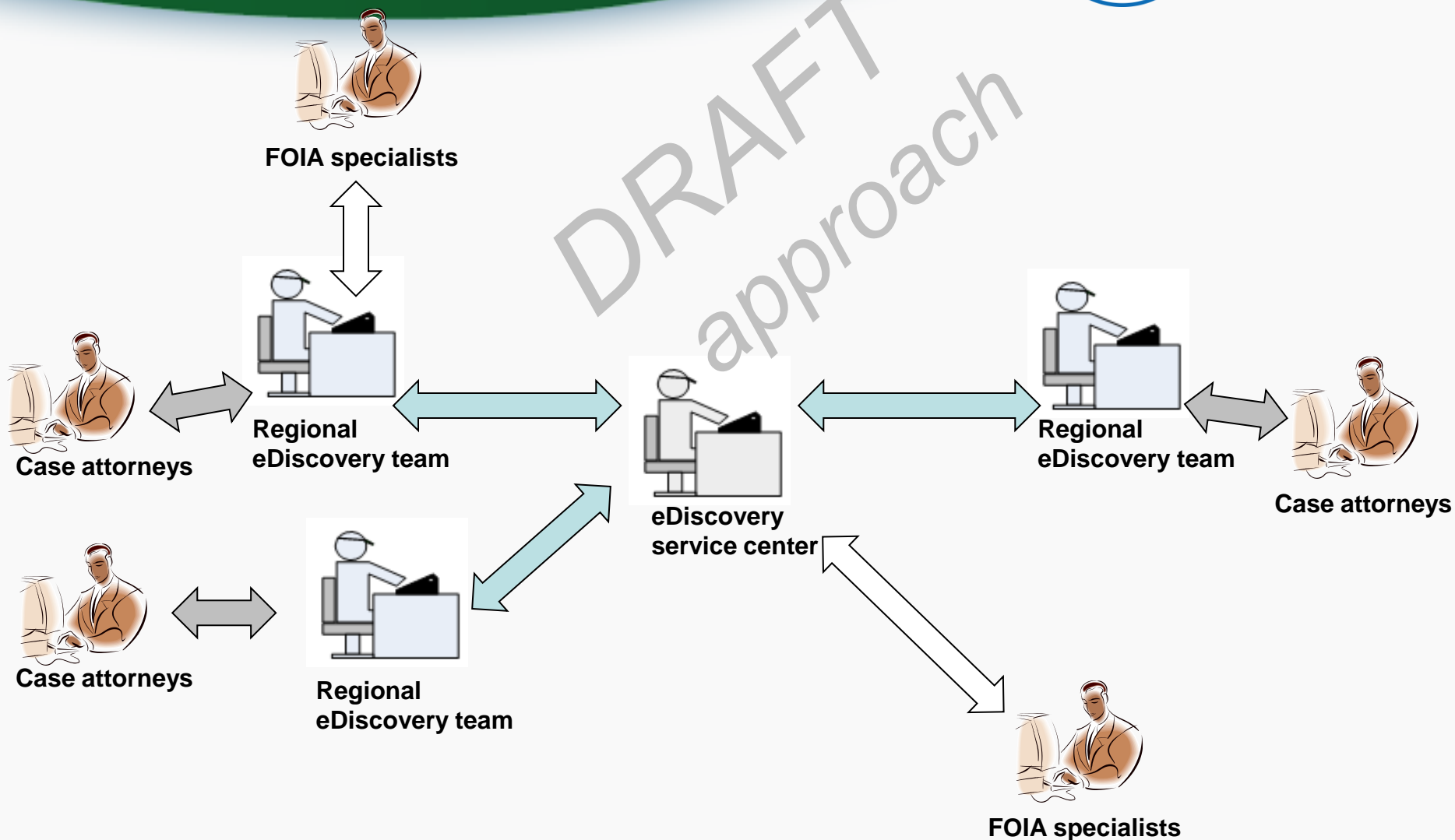
eDiscovery Service Center: *EnCase Tool*

- **Capabilities**

  Legal Holds
  - Stores data & search terms for cases that need to be preserved for legal holds

  Pre-Case Assessment
  - Attorneys & technical staff can perform "early collections" to determine potential volume of information collected and to fine tune searches

  Preservation / Collection
  - Collects data for selected custodians from desktops, email servers, data / share servers, Documentum, etc.
  - Bit-level collection, forensically and legally sound, robust chain of custody
  - Boolean and configurable search terms, Native format

  Review / Production
  - De-duplication of identical files

eDiscovery Service Center:
EnCase Tool

- **Pilots**
  - Successfully used "pre-case assessment" and "preservation / collection" capabilities (2 legal, 1 FOIA)

  - Successfully used "legal hold" capability one case

- **Findings**

  Operational and Technical
  - Compatible with EPA's infrastructure (requires "plug ins" for some systems)
  - Requires highly trained staff to develop search logic and to perform collections

  Results
  - Collections are consistent and legally-defensible
  - Encase found more responsive materials and in more locations (40% more documents/data than manual methods and tools)

  Implications
  - Shifts discovery from a reliance on custodian-based, self-identified searches to an automated searches performed by the tool on all sources

eDiscovery Service Center: *Relativity and Equivio*

- **Capabilities**

  De-Duplication (Equivio)

  - Identifies identical and near-identical files by comparing textual content and groups by similarity

  Threading (Equivio)

  - Identifies discussion threads in email.

  Collaborative review (Relativity)

  - Multiple users can review a set of files, preserves user's tags, etc.

  Highlighting (Relativity)

  - Automatically highlights words or phrases in text.

  Tagging (Relativity)

  - Enables attorney or subject matter expert to tag files based on content (can be use to tag files according to FOIA exemptions or legal privilege)

  Production (Relativity)

  - Produces files with numbers, indices

eDiscovery Service Center: *Relativity and Equivio*

- **Pilots**
  - Successfully used "de-duplication", "highlighting", "tagging", and "collaborative" processing on a large case (e.g., FOIA)

- **Findings**

  Operational and Technical

  - Compatible with EPA's infrastructure (as a web enabled application)
  - Requires training of staff to review files; requires more training for technical staff to administer tool.
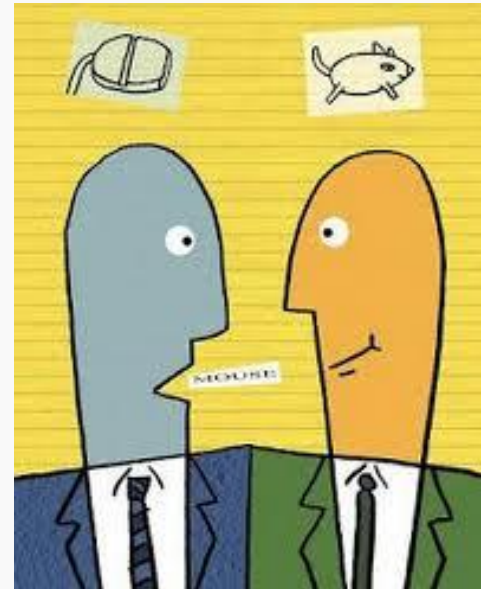
  Results

  - Files are reviewed consistently and collaboratively
  - Automates processing; much faster than manual approaches.

  Implications

  - Shifts document review from tedious, inconsistent manual review to a sophisticated electronic tool which automates key tasks (e.g., highlighting text, indexing), supports quick review (e.g., tagging), and accelerates processing.

The development of a new eDiscovery service forced a paradigm shift where Legal, Enforcement, and IT had to learn to communicate and partner effectively.

Challenges:

Resource Challenge:

➤ eDiscovery solutions are expensive (and staff time and other costs under the prior approach are often difficult to track)

Personnel Challenge:

➤ Recruiting employees who posses technical skills and legal understanding
  ▪ Created "Litigation Support Specialist" at EPA. This position description did not exist within the Agency

Communication Challenge:

➤ Outreach and Training on how to use new tools

Organizational Challenge:

➤ Developing a plan to establish, fund, and implement this service
➤ Modeling the eDiscovery business process

eDiscovery and FOIA: *Scenarios to use tools*

- EPA plans to develop criteria to guide the use of EnCase to collect responsive records for selected FOIA requests:
  - Large volume of records
  - Cross-organizational, multiple geographic locations
  - Controversial and/or public notoriety
  - Complex and/or emerging environmental issues

- EPA also plans to use Equivio and Relativity to support processing of selected FOIA requests (e.g., large volume, controversial, need for fast response):
  - De-duplicate records
  - Highlight critical text to identify information to withhold, etc.
  - Produce indices